

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK M. LAVELLE,
THOMAS C. MALONE
and JAMES R. TRANCHINA

Appeal No. 2006-0240
Application No. 09/698,918

ON BRIEF

MAILED

FEB 16 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before THOMAS, RUGGIERO, and DIXON, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-10 and 15-27, which are all of the claims pending in the present application. Claims 11-14 and 28 have been canceled. An amendment filed April 1, 2004 after final rejection was denied entry by the Examiner.

The disclosed invention relates to a display device mounted on a rear portion of a vehicle seat and which wirelessly transmits audio signals to a plurality of wireless headphone sets. More particularly, the audio signals are transmitted to

the plurality of headphone sets as a left audio channel and a right audio channel with each of the channels having a different frequency for each headphone set of the plurality of headphone sets.

Claim 1 is illustrative of the invention and reads as follows:

1. A display device for a vehicle having a seat, comprising:
an assembly housing adapted to mount the display device for view by a passenger at a rear seat;
a receiver adapted to receive at least one of video and audio signals from at least two input sources; and
at least one wireless transmitter operatively coupled to said receiver, adapted to wirelessly transmit the audio signals from the at least two input sources to each wireless headphone set of a plurality of headphone sets as a left audio channel and a right audio channel, each of the channels having a different frequency for each wireless headphone set of the plurality of wireless headphone sets;
wherein said display device is adapted to reproduce the video signals for viewing by the passenger; and
wherein the at least two input sources comprise one input source providing first audio signals to one wireless headphone set of the plurality of wireless headphone sets and a second input source providing second audio signals to a second wireless headphone set of the plurality of wireless headphone sets.

The Examiner relies on the following prior art:

Murphy	5,610,822	Mar. 11, 1997
Hylton et al. (Hylton)	5,793,413	Aug. 11, 1998
Burke et al. (Burke)	6,134,223	Oct. 17, 2000
Boyden et al. (Boyden)	6,301,367	Oct. 09, 2001 (filed Jun. 11, 1998)
Adams et al. (Adams)	6,380,978	Apr. 30, 2002 (filed Oct. 06, 1998)

Claims 1-10 and 15-27, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Adams in view of Murphy and Boyden with respect to claims 1-9, 15-19¹, and 25-27, adds Burke to the basic combination with respect to claim 10, and adds Hylton to the basic combination with respect to claims 20-24.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (filed July 26, 2004) and Answer (mailed August 23, 2005) for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner, the arguments in support of the rejections, and the evidence of obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' argument set forth in the Brief along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

¹ Since there is no indication to the contrary by either Appellants or the Examiner, we assume that the Examiner inadvertently failed to include dependent claim 19 in the statement of the grounds of rejection.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in appealed claims 1-10 and 15-27. Accordingly, we affirm.

Appellants' argument in response to the Examiner's rejection of the appealed claims are organized according to a suggested grouping of claims indicated at page 7 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)].

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the

burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to independent claim 1, Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. After reviewing the applied Adams, Murphy, and Boyden references in light of the arguments of record, we are in general agreement with the Examiner's position a stated in the Answer.

It is our view that, as asserted by the Examiner (Answer, page 8), Appellants' arguments unpersuasively focus on the individual differences between the limitations of independent claim 1 and each of the applied references. It is apparent,

however, from the Examiner's line of reasoning in the Answer, that the basis for the obviousness rejection is the combination of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881(CCPA 1981); In re Merck & Co., Inc., 800 F. 2d 1091, 1096, 231 USPQ 375, 380 (Fed. Cir. 1986).

In other words, while Appellants assert (Brief, pages 9 and 10) that Boyden lacks a teaching of the use of a single transmitter to transmit audio signals on left and right channels, the feature of using a single transmitter to transmit audio signals from multiple input sources is taught by Adams as modified with the multiple headset feature disclosed by Murphy. Similarly, while Appellants contend (Brief, page 13) that Murphy is lacking in any teaching of using wireless transmission of audio signals at different frequencies, this disclosure is provided by Adams.

We also agree with the Examiner that Appellants "single wireless transmitter" argument is not commensurate with the scope of claim 1. As pointed out by the Examiner (Answer, page 8), to whatever extent Appellants may be correct in their assertion that

Boyden does not use a single wireless transmitter, the language of claim 1 is not limited to a single wireless transmitter since the claim explicitly recites "at least one wireless transmitter." It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

We also find to be unconvincing Appellants' arguments with respect to independent claims 25 and 26, which in contrast to claim 1, require "at least two wireless transmitters." In our view, Appellants' argument again unpersuasively focus on the individual differences between the claims and the applied prior art. While Appellants assert that Adams and Boyden are concerned with single user systems, it is clear that Murphy provides a teaching of multiple transmissions to multiple headset users.

Lastly, Appellants' argument (Brief, pages 15-17) to the contrary notwithstanding, we find ample motivation for the Examiner's proposed combination of Adams, Murphy, and Boyden, for all of the reasons articulated by the Examiner at pages 5, 6, 10, and 13 of the Answer. We particularly find to be without merit Appellants' contention (Brief, pages 18 and 19) that Boyden "teaches away" from the claimed invention by discouraging the use of headphones at column 1, lines 30-50. It is apparent from our reading of Boyden that the only thing being "discouraged" is the use of earpieces which are inserted into the ear canal. It is quite clear that the disclosure of Boyden is directed to acoustic modules which are worn on the head of the user, i.e., headsets or headphones, albeit located adjacent to the ear rather than inserted into the ear.

It is also apparent to us from the line of reasoning expressed in the Answer that the Examiner is not suggesting the bodily incorporation of the acoustic modules of Boyden into the system of Adams as modified by Murphy. Rather, as pointed out by the Examiner (Answer, pages 6 and 7), it is Boyden's teaching of transmission to a headset user over left and right channels using different frequencies that is relied on as a rationale for the

proposed combination. "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference....Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). See also In re Sneed, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983) and In re Nievelt, 482 F.2d 965, 967, 179 USPQ 224, 226 (CCPA 1973).

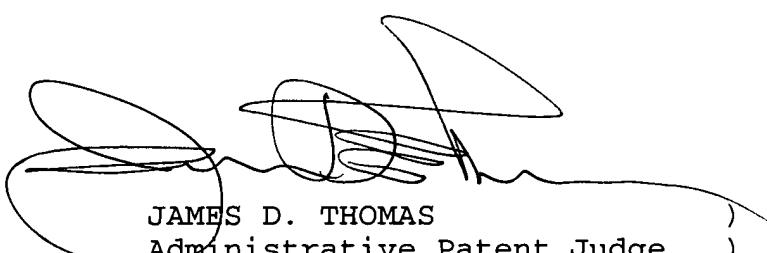
For the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing argument from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1, 25, and 26, as well as dependent claims 2-10, 15-24, and 27 not separately argued by Appellants, is sustained.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-10 and 15-27 is affirmed.

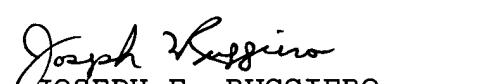
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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004).

AFFIRMED



JAMES D. THOMAS
Administrative Patent Judge



JOSEPH F. RUGGIERO
Administrative Patent Judge

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JOSEPH L. DIXON
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